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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 SAN JOSE DIVISION

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12 IP LEARN, LLC,

No. C 02-02634 JW

13 Plaintiff and Counterdefendant,

**DECLARATION OF DAVID E.
MELAUGH IN SUPPORT OF SABA
SOFTWARE, INC.'S MOTION TO
AMEND PRELIMINARY
INVALIDITY CONTENTIONS
PURSUANT TO LOCAL RULE 3-7**

14 v.

15 SABA SOFTWARE INC.; and DOES 1-10,

16 Defendant and Counterclaimant.

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1 I, David E. Melaugh, hereby declare as follows:

2 1. I am an attorney duly licensed to practice law in the State of California and an
3 associate in the law firm of Morrison & Foerster LLP, counsel of record for defendant Saba
4 Software, Inc. (“Saba”) in this action. I make this declaration in support of Saba Software, Inc.’s
5 Motion To Amend Preliminary Invalidity Contentions Pursuant To Local Rule 3-7.

6 2. On January 10, 2003, Saba served IP Learn with its Preliminary Invalidity
7 Contentions and Related Disclosure, a true and correct copy of which is attached as Exhibit M to
8 the Declaration of David E. Melaugh in Support of Saba Software, Inc.’s Motions For Summary
9 Judgment, filed herewith.

10 3. Saba subsequently received Iraj Hirmanpour’s thesis entitled “A Computerized
11 Model For Placement And Diagnostic Testing In College Remedial Mathematics” by way of a
12 commercial thesis delivery service. On February 11, 2003 Saba sent a copy of the thesis to IP
13 Learn. Attached hereto as Exhibit A is a true and correct copy of the cover letter to that
14 production, sent by Frederick Chung of my firm, counsel to Saba, to Jon Ikegami, counsel to IP
15 Learn LLC (“IP Learn”), on February 11, 2003. A true and correct copy of the thesis received by
16 Morrison & Foerster that accompanied that letter is attached as Exhibit A to the Declaration of
17 Iraj Hirmanpour, filed herewith.

18 4. Attached hereto as Exhibit B is a true and correct copy of a letter sent by Frederick
19 Chung of my firm, counsel to Saba, to Jon Ikegami, counsel to IP Learn LLC (“IP Learn”), on
20 March 18, 2003.

21 5. Attached hereto as Exhibit C is a true and correct copy of “Table 9,” which
22 accompanied Exhibit B, containing Saba’s preliminary infringement contentions as they relate to
23 the Hirmanpour thesis.

24 6. Attached hereto as Exhibit D is a true and correct copy of a letter from Douglas
25 Robbins, counsel to IP Learn, to me, sent April 1, 2003.

26 7. On May 1, 2003, I spoke by telephone with Wayne Stacey, counsel to IP Learn.
27 Mr. Stacey indicated that IP Learn would not oppose a motion to update Saba’s invalidity
28 contentions in the fashion discussed in the parties’ correspondence.

